PAUL, HASTINGS, JANOFSKY & WALKER LLP Robert L. Sherman (RS 5520) Catherine M. Clayton (CC 5575) 75 East 55th Street New York, NY 10022 (212) 318-6000

Attorneys for Plaintiff FragranceNet.com, Inc.

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

FragranceNet.com, Inc.,

Plaintiff,

TOMLINSON, M.J. COMPLAINT

FragranceX.com Inc.

- against -

Defendant.

FILED

U.S. DISTRICT COURT E.D.N.Y.

MAY 1 2 2006 *

BROOKLYN OFFICE

BIANCO, J.

Civil Action No.

Doc. 1

Plaintiff FragranceNet.com, Inc. ("FragranceNet.com" or "Plaintiff"), by and through its FragranceNet.com, Inc. v. FragranceX.com Inc.

attorneys Paul, Hastings, Janofsky & Walker LLP, as and for its Complaint against defendant FragranceX.com ("FragranceX.com" or "Defendant") alleges as follows, upon actual knowledge with respect to itself and its own acts and upon information and belief as to all other matters:

NATURE OF THE ACTION

1. This is an action to recover for the damage caused by, and to prevent further damage arising from, Defendant's infringement of FragranceNet.com's copyrights in and to more than eight hundred (800) photographs. Plaintiff FragranceNet.com owns and operates an on-line retail store that sells perfumery and related products. This action arises out of Defendant's taking, misappropriating and copying of more than eight hundred (800) photographs from FragranceNet.com's site (the "Photographs") and, without permission or compensation to

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FragranceNet.com, used copies of them on the site of its competing on-line retail store, www.fragrancex.com. Defendant has generated substantial revenue as a result of the use of the Photographs on its site, to FragranceNet.com's great and irreparable harm. FragranceNet.com seeks preliminary and permanent injunctive relief and compensatory and punitive damages based on Defendant's copyright infringement.

2. This action arises under the copyright laws of the United States, 17 U.S.C. § 101 et seq.

PARTIES

- 3. FragranceNet.com is a Delaware corporation having its principal place of business at 104 Parkway Drive South, Hauppauge, NY 11788.
- 4. On information and belief, defendant FragranceX.com is a New York corporation having a business address of 49-09 5th Street, Long Island City, NY 11101.

JURISDICTION AND VENUE

- 5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338.
- 6. This Court has personal jurisdiction over **Defendant** because it resides in this district and because its tortious conduct takes place and causes FragranceNet.com injury in this state and district.
 - 7. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

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FACTUAL ALLEGATIONS

- 8. FragranceNet.com is in the business of selling perfumery and related goods via its on-line retail store posted at www.fragrancenet.com. That site has been in operation since June 1997, and, by virtue of FragranceNet.com's efforts and expenditures, has become one of the most successful on-line perfume stores in the United States.
- 9. FragranceNet.com has expended significant time, effort and money to develop its on-line retail store.
- 10. In developing its business, FragranceNet.com has created hundreds of photographs of the products it offers for sale, including the Photographs. The background, arrangement, lighting, use of shadow, angle and selection of products within each line to be included within the Photographs are among the original elements contributed by the Photographs.
- 11. FragranceNet.com is the author and copyright owner with respect to the Photographs, which are displayed on the www.fragrancenet.com site so that consumers may see what is offered for sale, and to reassure consumers that they are purchasing legitimate and high quality products.
- 12. FragranceNet.com registered its rights in and to the Photographs and obtained from the Register of Copyrights, Certificates of Copyright Registration Nos. VA 1-340-784, VA 1-340-783, VA 1-340-782, dated February 21, 2006. Copies of the foregoing registration certificates are annexed hereto as Exhibit A.
- 13. FragranceNet.com is, and at all relevant times has been, the owner of all copyrights in and to the Photographs.

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- At some time prior to August 1, 2005, Defendant copied more than eight hundred 14. (800) of the Photographs without the authorization of FragranceNet.com and posted them on its competing on-line fragrance store, www.fragranceX.com. Annexed hereto as Exhibit B are representative examples of the Photographs, each followed by a screenshot from Defendant's www.fragranceX.com site showing Defendant's infringing copy of the Photograph.
- 15. On August 1, 2005, FragranceNet.com formally notified Defendant that it infringed FragranceNet.com's rights and demanded that Defendant cease and desist from all further infringement. Defendant has failed and refused to do so.
- On November 21, 2005, Defendant advised FragranceNet.com that, regardless of 16. whether FragranceNet.com brought an action against it for copyright infringement, Defendant intended to complete a full-scale revision of its Web site by April 1, 2006. Defendant has not done so.
- 17. For months FragranceNet.com attempted to resolve the matter, but to no avail. When FragranceNet.com realized that its efforts were futile, it commenced this action.
 - 18. FragranceNet.com has no adequate remedy at law.

COUNT I (Copyright Infringement)

- FragranceNet.com repeats and realleges the allegations contained in paragraphs 1-19. 18 of the Complaint as if fully set forth herein.
- The actions of Defendant, as undertaken and continued to date, infringe 20. FragranceNet.com's exclusive rights, inter alia, to reproduce and distribute the Photographs, all in violation of FragranceNet.com's exclusive copyrights under 17 U.S.C. §§ 104(a) and 106. Such acts constitute copyright infringement under 17 U.S.C. § 501.

- 21. Defendant's unlawful acts set forth above **constitute** willful copyright infringement.
- 22. The actions of Defendant complained of herein have caused, are causing and, unless enjoined by the Court, will continue to cause irreparable harm, damage and injury to FragranceNet.com.
- 23. The actions of Defendant complained of herein have damaged, are damaging and will continue to damage FragranceNet.com in an amount to be determined at trial.

Demand For Relief

WHEREFORE, FragranceNet.com respectfully prays for judgment to be entered against Defendant:

- a. preliminarily and permanently enjoining Defendant, its officers, agents, servants, employees and attorneys, and those persons acting in concert with it from further violating 17 U.S.C. § 101 et seq. and inducing, contributing to, causing, engaging or authorizing any individual or entity to perform any of the aforementioned acts;
- b. directing Defendant to account to FragranceNet.com for any and all gains, profits and advantages derived from Defendant's wrongful acts complained of;
- c. directing Defendant to file with the **Court** and serve upon counsel for FragranceNet.com within thirty (30) days after entry of any preliminary or permanent injunction issued by this Court, a sworn written statement as provided in 15 U.S.C. §1116 setting forth in detail the manner and form in which defendants have complied with the injunction;
- d. awarding damages to FragranceNet.com against Defendant, according to proof at trial;

- e. awarding FragranceNet.com punitive damages in an amount to be determined at trial;
 - f. awarding FragranceNet.com its costs pursuant to 17 U.S.C. § 505; and
 - g. Granting such other and further relief as the Court deems just and proper.

Dated: May 12, 2006

Respectfully submitted,

PAUL, HASTINGS, JANOFSKY & WALKER LLP

Robert L. Sherman (RS 5520)

Catherine M. Clayton (CC 5575)

75 E. 55th Street

New York, New York 10022

212-318-6000

Attorneys for Plaintiff

FragranceNet.com, Inc.

EXHIBIT A



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters
Register of Copyrights, United States of America

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*Amended by C 0.02225-JFB-AKT Document 1 Filed 05/12/2006 Page 9 of 64 phone call from Catherine M. Clayton, Esq. on March 7, 2006. FORM VA EXAMINED BY CHECKED BY FOR ESPONENCE COPYRIGHT OFFICE USE ONLY DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET. PREVIOUS REGISTRATION Has registration for this week, or for an cartier version of this work, already base limits in the Copyright Office? ☐ Yes ☐ No If your namer is "Yes," why is another registration being sought? (Check appropriate bost.) ▼ a. [] This is the first published edition of a work previously registered in unpublished form. b. [] This is the first application submitted by this author as copyright chalmant. c. \square This is a changed version of the work, as shows by space 6 on this application If your answer is "Yes," give: Previous Registration Number W Year of Registration ♥ DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; et a. Preexisting Material Identify any prescripting work or works that this work is based on or incorporates. h Material Added to This Work Cive a brief, general statement of the material that has been added to this work and in unlich copyright is claimed. DEPOSIT ACCOUNT 17 the registration fee is to be charged to a Deposit Account established in the Copyright Cillian, give name and number of Account, Name V CORRESPONDENCE Give name and address to which correspondence shout this application should be sent, ManualAddress/Aps/City/State/ZIP V Catherine M. Clayton, Esq. Paul, Hastings, Janofsky & Walker LLP, 75 East 55th Street, New York, NY 10022 Area code and deylime telephone number (212) 318.6084 (212)230.7781 Email ris@paulhastings.com CRRTIFICATION® I, the undersigned, hereby certify that I am the other copyright d check only one 1 FragranceNet.com, Inc. e all author or other copyright claiment, or owner of exclusive Agre(s) A into made by me in this application are correct to the best of my knowledge. of the work identified in this application a Typed or printed name and date ♥ If this app s a date of publication in space 3, do not sign and submit it before that date. Dennis M. Apfel 2/10/06 Date Handwritten signature (2) х Certificate

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Paul, Hastings, Janofsky & Walker LLP

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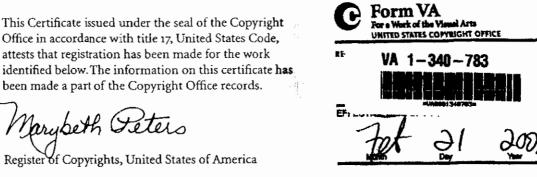
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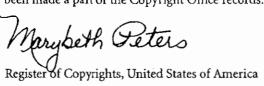


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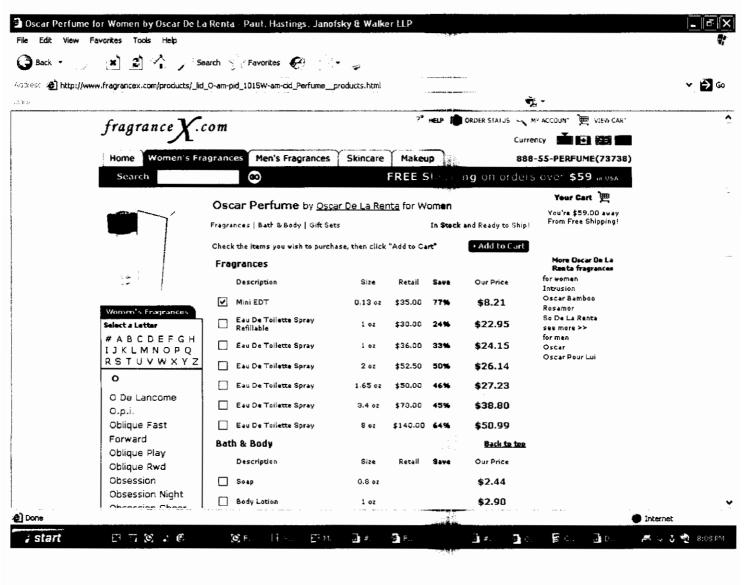
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Exhibit B

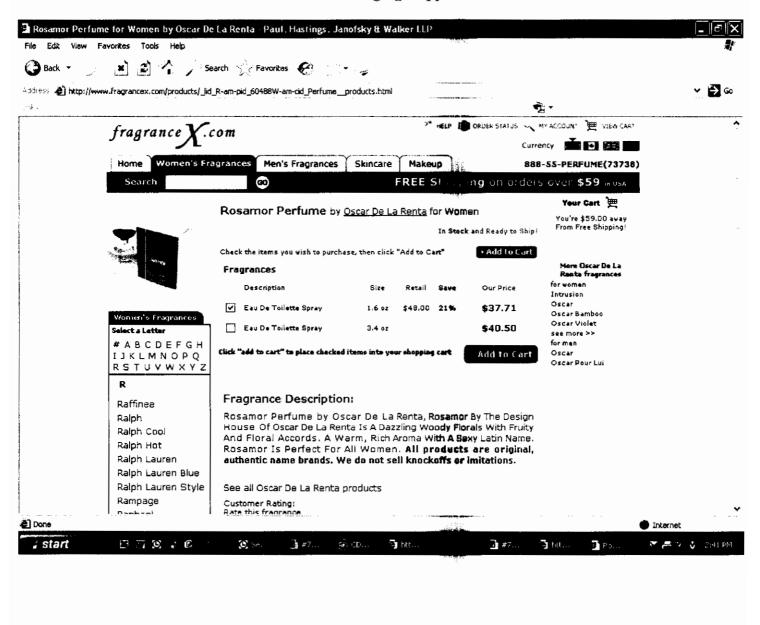


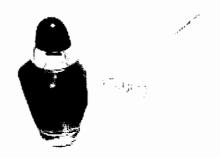


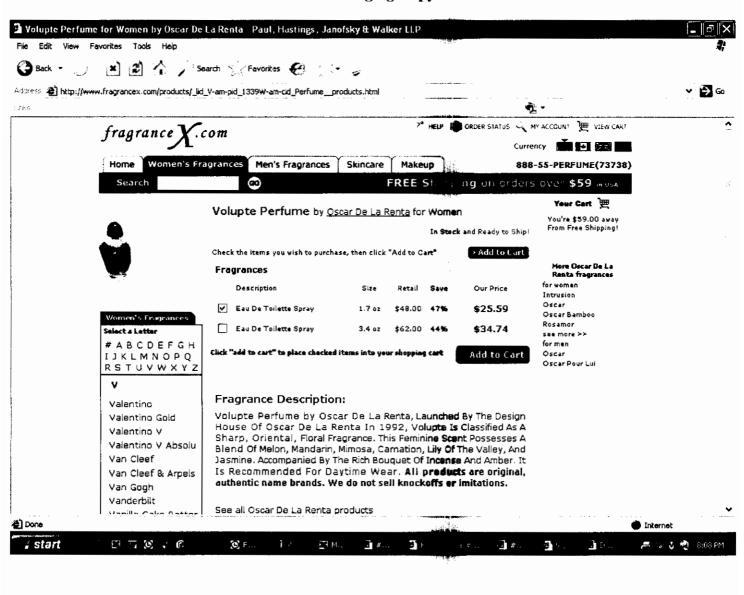




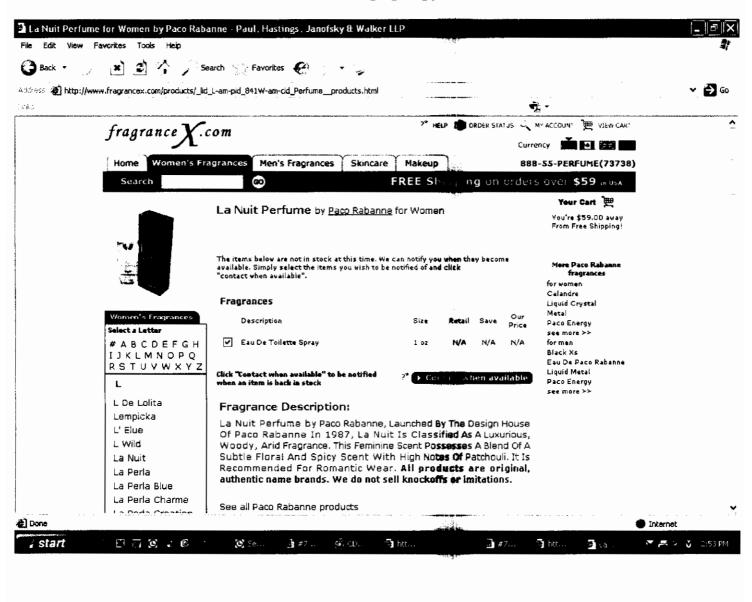


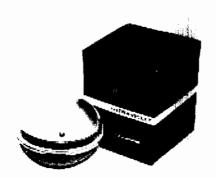


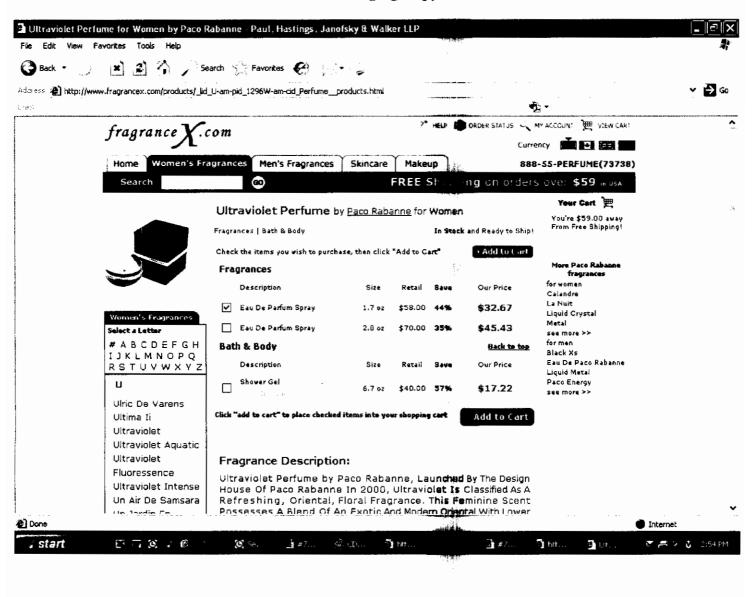






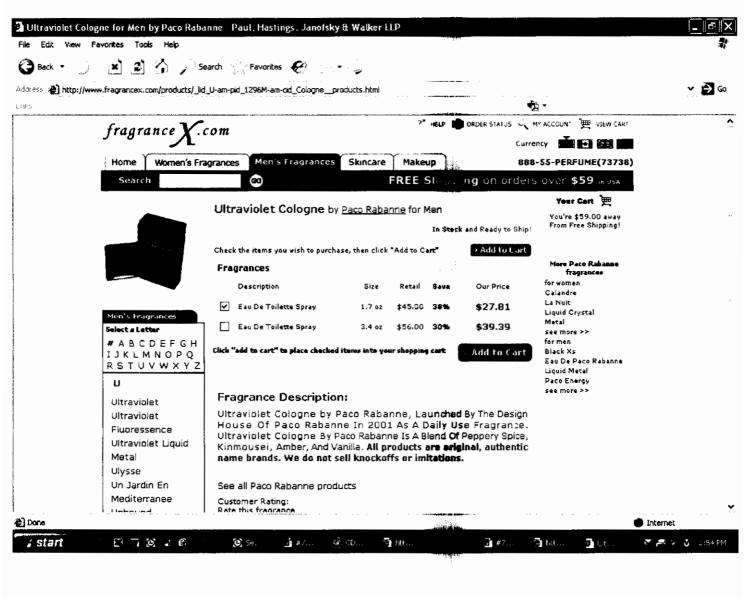






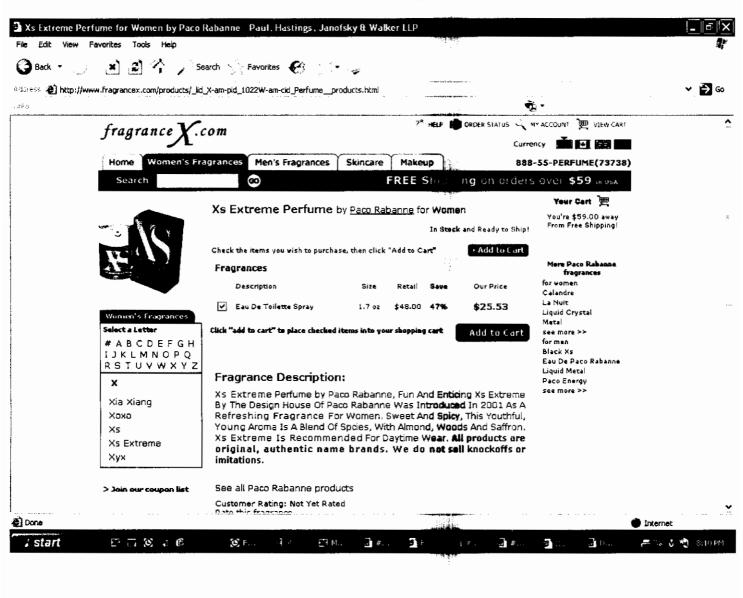
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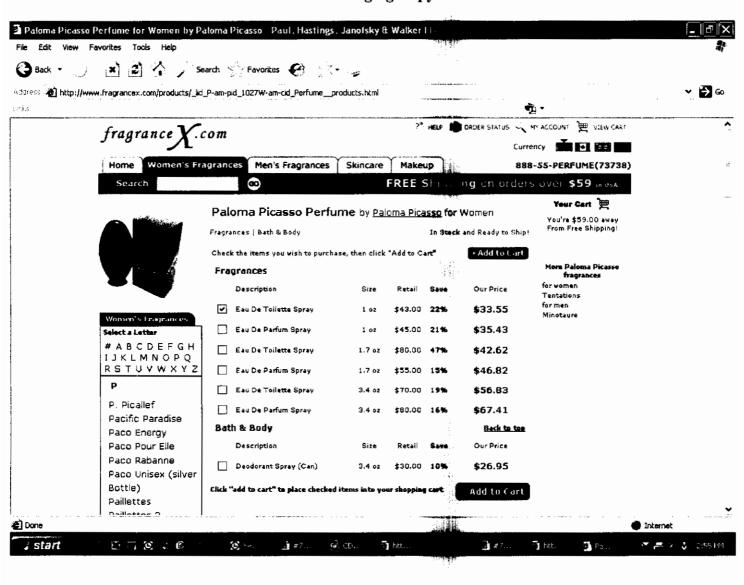


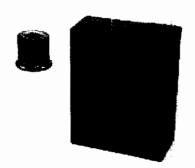
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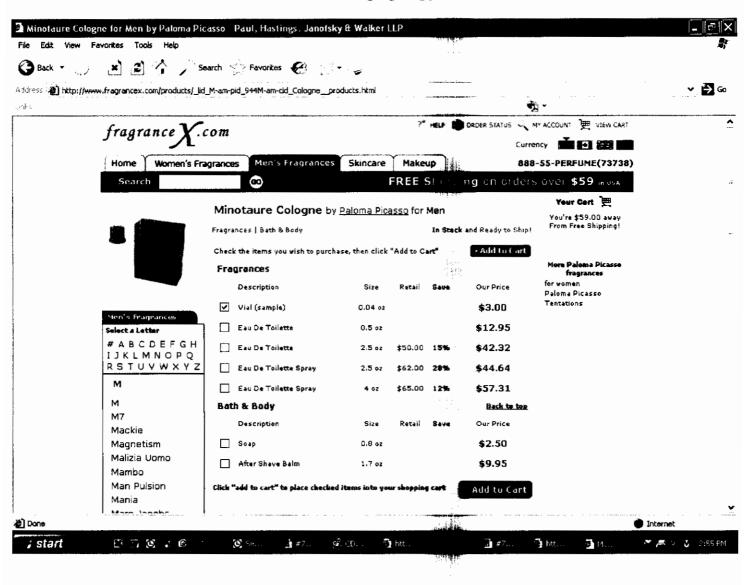




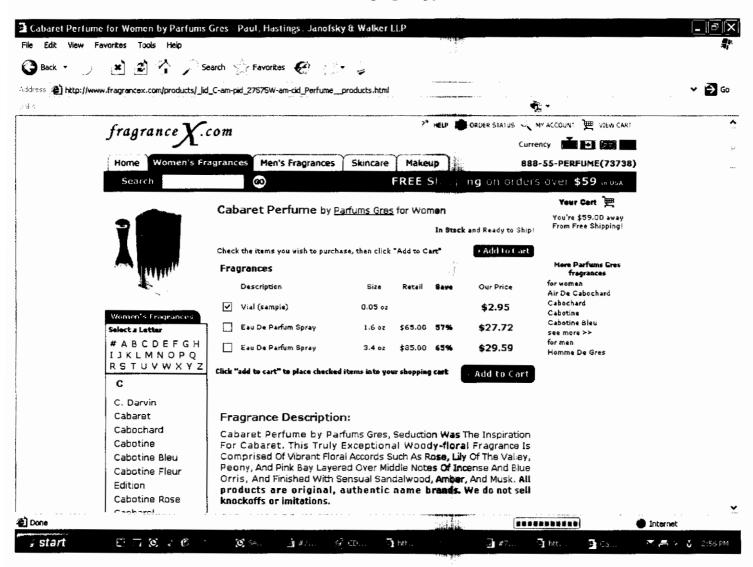






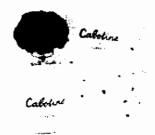


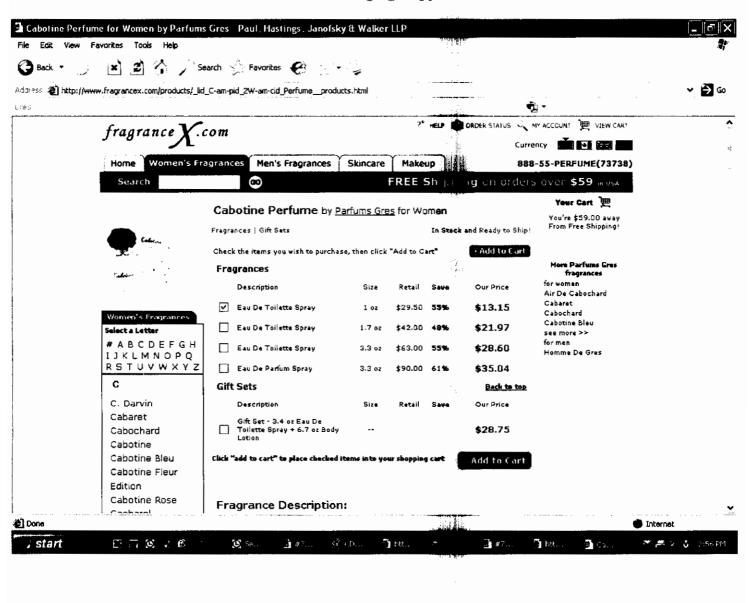




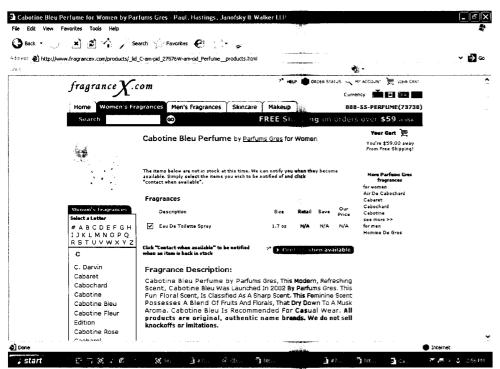
















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